



# Criteria and Guidelines for Critical Situations

---

Recommended by the  
*Water Resources Forum*

Approved by the  
*Department of Ecology*

March 1992  
Publication #92-30

  
*printed on recycled paper*

CRITICAL SITUATIONS  
CRITERIA and GUIDELINES

March, 1992

## TABLE OF CONTENTS

INTRODUCTION . . . . .	ii
CRITERIA FOR CRITICAL SITUATIONS . . . . .	1
CLASSIFICATION OF THE SITUATION . . . . .	2
PROCESS FOR DESIGNATION . . . . .	2
CONSULTATION . . . . .	3
PROCESS FOR REACHING RESOLUTION . . . . .	4
POTENTIAL TOOLS FOR RESOLUTION . . . . .	4
CONCLUDING THE PROCESS . . . . .	4

## INTRODUCTION

Criteria and guidelines for critical situations under the Chelan Agreement on Water Resources are provided to facilitate responses to situations requiring action now.

A subcommittee of the Water Resources Forum was established to develop the Critical Situation Criteria/Guidelines. The subcommittee was comprised of the following members:

Chair:        Eric Slagle, state caucus

Don Davidson, local government caucus  
Grant Degginger, business caucus  
Polly Dyer, environmental caucus  
Ben George, agriculture caucus  
Bob Gordon, recreation caucus  
Bob Minnott, business caucus  
Bill Robinson, fisheries caucus  
Larry Wasserman, tribal caucus  
Terry Williams, tribal caucus

staff:        Ellen Wolfhagen, Ecology

These Guidelines were formally approved by the Water Resources Forum at their December 19, 1991 meeting. The Regional Planning Guidelines were submitted to the Department of Ecology and recommended for approval on January 13, 1992.

CRITERIA AND GUIDELINES FOR CRITICAL SITUATIONS  
UNDER THE CHELAN AGREEMENT ON WATER RESOURCES

The Chelan Agreement on Water Resources provides, in Section V (Organized Response to Critical Situations Which Require Action Now), that "The Forum shall review the need for guidelines to assist in the implementation of this section." The following guidelines and criteria are provided for purposes of facilitating the implementation of this important component of the agreement.

I. Criteria for Critical Situations

Water related situations are eligible for designation as "critical situations" if the following criteria are met:

- A. The situation raises issues over which Department of Ecology has jurisdictional authority, including but not limited to:
- o volume of applications for water withdrawal
  - o backlog of applications for water withdrawal
  - o letters of request for instream flow
  - o request for reservation for municipal use
  - o well interference - wells are drying other wells
  - o hydraulic continuity
  - o international and state jurisdiction disputes over water withdrawal and instream flow
  - o exemption for instream flow for "overriding public interest" (complicated by the fact that some projects are already in place)
  - o non-permitted development
  - o Ecology required to make water system efficiency evaluations
  - o Ecology required to evaluate whether or not conservation is in place or reasonable
  - o seawater intrusion
  - o water quality, when related to water use and availability
  - o mitigation projects that require flows in over-appropriated systems
  - o Section 63 (HB 2929) proof of water availability
  - o exempted wells
  - o request for reservation for municipal water use
  - o instream flow levels that threaten fish and wildlife habitat
- (NB: These are not in priority order.)

- B. Areas or natural resources selected for critical situations should have an associated sense of urgency for resolution. This might be indicated by imminent threat of litigation, potential immediate and significant impacts to public health or the environment, or the need for an immediate response based on associated pending activities.

- C. A critical situation is not a basin plan (covering multiple issues, involving many jurisdictions and interest groups and encompassing a large geographical area), or a pilot project under regional planning.

## II. Classification of the Situation

A critical situation may be classified as presenting a critical resource impact or as presenting a probable resource impact.

- A. Critical Resource Impact situations are those where the participating governments are certain that the water resource is presently being adversely affected by existing actions, or will be so affected by proposed actions. Any pending action that would adversely impact instream resources may be delayed or denied if further harm to the resource would result.
- B. Probable Resource Impact situations are those where the participating governments believe the water resource may be adversely affected by existing conditions or by proposed actions. These situations shall be evaluated to determine whether existing conditions merit reclassification as a critical resource impact. If the evaluation leads to a conclusion that the situation is not critical or will not be made so by the proposed actions or activities, then the process is concluded.

## III. Process for Designation of Critical Situations

- A. The state, Indian Tribe(s), or general purpose local government(s) may determine that a water resources situation raises issues that warrant designation as a critical situation. These governmental entities must agree on the designation of a critical situation.
- (1) A special purpose local government may recommend such designation to a general purpose local government which shall initiate the mechanism on their behalf.
  - (2) Anyone can petition any of the three governmental entities to consider designation of a critical water resource situation.
- B. A letter will be sent from the initiating governmental entity to Ecology proposing designation of a critical situation, identifying issues and affected governmental entities that need to be notified to request their participation. A copy of the initiating letter will be sent to all known governments with an affected interest in the situation.
- C. Ecology will send a certified letter within seven calendar days of receipt of the initiating letter to all affected governmental entities to convene a meeting to determine if there is consensus agreement on the proposed designation of the critical situation.

This group will be called the Critical Situation Convening Committee. A copy of the letter will be sent to the Water Resources Forum.

- (1) Considerations that might go into deciding whether a critical situation should be designated are:

- o prior commitment of staff resources
- o probability of success
- o level of support from all levels of government
- o within the original scope of critical situations (if not, consider another approach -- either narrower or broader)
- o whether the Forum is dealing with the issue and will make a recommendation within a reasonable timeframe
- o whether any other processes are available to address the situation

(NB: These are not in priority order.)

- (2) If the designation is not made, the opposing governmental entity(ies) shall provide a written statement with the reasons for the denial (with a copy to the Forum). Ecology will also provide a written statement (to the other governments and the Forum) on what actions it will take to address the situation. If the designation is not made because the situation is not within Ecology's jurisdiction, the statement shall so indicate.
- (3) If there is a designation, the scope of the situation will be agreed to by the Critical Situation Convening Committee.
- (4) A decision whether to designate a critical situation must be made within 60 calendar days of Ecology's certified letter, or longer if agreed to by all governmental entities.

- D. A government may elect not to participate in this process if it is unaffected by the issue.

#### IV. Consultation

- A. The affected governments may consult on the proposed critical situation. The proponent government shall be responsible for making arrangements for convening an Intergovernmental Work Group (IG) which will finalize the scope of the issue, develop and implement an action plan and identify the schedule for achieving resolution.
- B. If any government is unwilling to consult to resolve the critical situation, then the process terminates and solutions may be pursued through alternative means. If the process terminates,

Ecology will send a notice to the IG (with a copy to the Forum) and identify what action, if any, it will take to address the critical situation.

- C. Public Involvement -- All affected interest groups and governmental entities will be identified by the IG and a letter will be sent out (by the proponent entity) notifying them of the designation of the critical situation and the future process. The IG needs to ensure that the public is informed, through public meetings, news releases and other efforts.

#### V. Process for Reaching Resolution

There are several approaches or processes for reaching resolution of critical situations. The following should be considered:

- A. Dispute resolution assistance (facilitation)
- B. Memoranda of understanding or other agreements
- C. Mediation or arbitration

#### VI. Potential Tools for Resolution

The affected governments may agree on measures to resolve a critical situation. Potential tools, in addition to data collection, as necessary, include but are not limited to:

- A. Targeted conservation and efficiency improvements
- B. Water reuse
- C. Compliance and enforcement actions
- D. Restrictions/conditions on permits
- E. Moratoria
- F. Withdrawal from appropriation pending information collection
- G. Establish and protect instream flows
- H. Stream flow improvements and other resource enhancement measures
- I. Acquire trust water rights through conservation, receipt of gifts, purchase, or other appropriate means
- J. Water right transfers
- K. Conjunctive use or artificial recharge
- L. Joint studies

#### VII. Concluding the Process

- A. The measures selected must be exercised within twelve months or as otherwise agreed to by the participating governments.
- B. If at any time during the process the parties reach an impasse, any party may elect to exercise other options (litigation, enforcement, etc.).
- C. The process is concluded when the participating governments are satisfied that the critical situation has been resolved. If

necessary, implementing documentation can be created (regulations, ordinances, MOU's, etc.).